

GAHC010257602024



2024:GAU-AS:12441

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./3706/2024

AZAD ALI AND ANR
S/O LATE ASAN ALI
R/O VILL- BARAJOL
P.S. GHOGRAPAR
DIST. NALBARI, ASSAM
PIN-781369

2: AJIBAR KHAN @ AJIBUR KHAN
S/O RAFIK KHAN
R/O VILL- BARAJOL
P.S. GHOGRAPAR
DIST. NALBARI
ASSAM
PIN-781369

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. S NATH, MUSTAFIJUR RAHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09-12-2024

Heard Mr. S. Nath, learned counsel for the petitioners and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State.

2. The petitioners, namely, **(i) Azad Ali**, son of Late Asan Ali and **(ii) Ajibar Khan @ Ajibur Khan**, son of Rafik Khan; both are resident of Village-Barajol, Police Station-Ghograpar, District-Nalbari have filed this application under Section 483 BNSS, 2023 praying for their release on bail in Chandmari Police Station Case No. 282 of 2024 under Sections 303(2)/112(2)/3(5) BNS, 2023, read with added Sections 317(2)/238(C) BNS, 2023 corresponding to G.R. No. 6828/2024, in which they were arrested on 20.11.2024 and are in custody since then.

3. It is submitted on behalf of the petitioners that they are no way connected with the case and have been falsely implicated in it. It is stated that the petitioner No.1 is an owner of a scrap shop situated at Borajal which he has been running since long time, whereas the petitioner No.2 is a daily worker who has been working since long time in the said scrap shop. The petitioner No.1 used to purchase old iron scrap materials, waste papers, plastic etc. from different persons and sale those to others. It is also stated on behalf of the petitioner No.1 that he did not receive nor did he sale any kind of articles from any person mentioned in the FIR of said Chandmari PS Case and that both the petitioners are innocent and no way involved in the case. It is also submitted on behalf of the petitioners that police personnel from Chandmari Police Station only on suspicion have arrested them and that the petitioners donot have any knowledge about the stolen articles specified in the FIR of said Chandmari P.S. Case. Petitioners submitted that stolen articles mentioned in the FIR of the case have already been recovered and seized from another arrested co-accused, namely, Sunny Chakraborty.

4. The petitioners stated that they are innocent and that they did not have any criminal record in the past and that they are the only earning members of their respective families having their wife and minor children. It is submitted that the petitioners shall co-operate with the investigation of the case and that they will abide by any terms and conditions that may be

imposed upon them by the Court while considering their case for releasing them on bail.

5. It is submitted by the petitioners that arrested co-accused of the case have already been released on bail by the Court of learned Additional Sessions Judge, Kamrup (Metro), Guwahati. Considering their detention since 20.11.2024 and as co-accused of the case have already been released on bail, the petitioners, therefore, have prayed for their release on bail in said Chandmari P.S. Case No. 282/2024.

6. Mr. B Sarma, learned Additional Public Prosecutor for the State submitted that the accused persons involved in the case have been charged with the theft of manhole covers, a crime that directly endangers public safety by leaving those manholes open, risking severe accidents or fatalities. Such crime also disrupts essential public infrastructure, demonstrating its anti-social nature and the significant harm caused to the public.

7. With regard to the petitioners, Mr. Sarma, learned Addl. Public Prosecutor from the Case diary submitted that the petitioners who are scrap dealers and middleman, acted as intermediaries, who knowingly received the stolen manhole covers from the initial thieves and transported them to the handlers, displaying clear intent to support the organised operation of theft of manhole covers, involved in the case. Mr. Sarma submitted that considering the gravity of the offences, bail should not be granted to the petitioners as investigation is going on and if granted, it would undermine the public confidence in the justice system. Therefore, Mr. Sarma prayed for rejection of the bail of the petitioners considering their involvement in the case on the basis of the materials available in the case diary.

8. As per the FIR dated 18.11.2024, the case is that over the past few days a series of thefts involving manhole covers in the Bamunimaidan area were noticed. It was reported that a group of miscreants had been stealing the manhole covers using small commercial vehicle to transport them and selling those outside Guwahati. The accused persons have allegedly been engaging in such activities for extended period. After receiving such reports, the matter was informed to the Officer-in-charge of Chandmari Police Station who in turn notified the matter to the senior Police Officials as per the procedure. Accordingly, a team was subsequently formed consisting of police personnel from Chandmari Police Station to investigate the matter. For the last few days patrolling was intensified in Chandmari area. On 18.11.2024 in the morning hours around 06:00 am, based on credible suspicion, the said police team successfully apprehended the gang

members, five stolen numbers of manhole covers were recovered along with a four-wheeler commercial vehicle (Tata Yodha) bearing Registration No. AS-01-QC-0265. Exploiting the ongoing drainage repair and the cleaning work, during which manhole covers were left beside the footpaths, the accused persons posed as Guwahati Municipal workers to avoid suspicion and had stolen those manhole covers, during which six of the accused persons were apprehended who loaded the stolen manhole covers into the vehicle and attempted to flee. During the preliminary enquiry it was revealed that the vehicle belongs to one Chinmoy Chakraborty and was also discovered that the apprehended accused persons had been selling the stolen manhole covers to scrap yards in Rangia and furthermore, a middleman posing as a GMC official was found assisting the apprehended accused persons in executing the theft of manhole covers and that the stolen articles have been duly seized preparing the seizure memo and the accused persons were duly apprehended by police personnel. As such the complainant lodged the FIR before the Officer-in-Charge of Chandmari Police Station requesting the said authority to initiate legal action against the apprehended individuals, the alleged GMC official, the scrap yard owners involved in the case who received the stolen goods and to register a case under the appropriate sections of law and for necessary investigation of the case. Accordingly, Chandmari Police Station Case No. 282/2024 under Sections 303(2)/112(2)/3(5) BNS, 2023, read with added Sections 317(2)/238(C) BNS, 2023.

9. From the forwarding report of the petitioners dated 20.11.2024 annexed to this petition as Annexure-2, it is seen that on the basis of confessional statements of the remanded accused persons of the case and during investigation process of said Chandmari P.S. Case No. 282/2024 as evidences have been found against them, the concerned police personnel apprehended the petitioners from different places of Guwahati and Rangia in said Chandramani P.S. Case and after their arrest, the present petitioners along with other arrested accused persons of the case were accordingly produced before the Court on 20.11.2024.

10. During the deliberation of the matter, Mr. Nath, learned counsel for the petitioners submitted that police before arresting the petitioners did not serve them Notice under Section 35(3) of the BNSS as required under the law, which are mandatory in nature and thereby committed illegality, for which the petitioners are entitled for bail.

11. Mr. B Sarma, learned Addl. P.P., Assam on the other hand objected the said submission of Mr. Nath, learned counsel for the petitioners, stating that both the petitioners along with others

were apprehended from different places in Guwahati and Rangia based on the confessional statements of the remanded accused persons of the case and on the basis of evidences found against them during the process of investigation of the case. Mr. Sarma, learned Addl. P.P., Assam stated that following the due process the petitioners were apprehended during investigation process of the cases per the provisions of Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS and therefore, the service of Notice under Section 35(3) of the BNSS need not be served upon the petitioners. In that regard Mr. Sharma has placed the forwarding report dated 20.11.2024 of the petitioners, annexed to do this petition as Annexure-2. Mr. Sarmah has also placed the relevant case diary in that regard.

12. Perused the case diary placed by Mr. Sarma, learned Addl. P.P., Assam. From the Case diary it is seen that Inspection Memo duly signed by the petitioners as apprehenders; Memo of Arrest under Section 35 of the BNSS, duly served upon the petitioners with their signatures on it; Notice under Section 47 BNSS, duly served upon the petitioners with their signatures on it; as well as Notice under Section 48 BNSS served upon the petitioners, with the signatures of the petitioners on those, all dated 20.11.2024 have been found on the said record.

13. From the case diary it is also seen that on their production on 20.11. 2024, the learned Judicial Magistrate First Class, Kamrup (M), Guwahati in said Chandmari P.S. Case No. 282/2024, on perusal of the records, found the grounds of arrest of the petitioners as justified and done in accordance with the provisions of Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS and the mandate of the Hon'ble Supreme Court in the cases of *Arnesh Kumar Vs. State of Bihar*, reported in (2014) 8 SCC 273, *Satender Kr. Antil Vs. CBI*, reported in (2022) 10 SCC 51, *Mohd. Muslim @ Hussain Vs. State*, reported in 2023 INSC 311 and *Prabir Purkayastha Vs. State*, reported in 2024 0 INSC 414.

14. On perusal of the case diary sufficient incriminating materials have been found against the petitioners with their involvement in the alleged crime.

15. The case diary indicates that the theft of manhole covers was not an isolated incident but part of a premeditated and systematic criminal operation involving impersonation, coordination with intermediaries and collaboration with scrap yards to process stolen property. The actions of the accused persons involved in the case indicate a well-planned and an organised criminal network and that the accused persons are closely tied to a larger network of criminals,

intermediaries and scrap the operators. It is also seen that investigation is yet to be completed.

16. Considering the entire aspects of the matter, noted above, this Court is of the opinion that detention of the petitioners since 20.11.2024 cannot be considered for their bail in said Chandmari P.S. Case No. 282/2024.

17. Accordingly, this bail application of the petitioners **(i) Azad Ali**, son of Late Asan Ali and **(ii) Ajibar Khan @ Ajibur Khan**, son of Rafik Khan in said Chandmari Police Station Case No. 282/2024 stands rejected.

18. Return the Case diary here with.

JUDGE

Comparing Assistant